

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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SETH D. HARRIS, ACTING SECRETARY
OF LABOR, UNITED STATES DEPARTMENT
OF LABOR,

Plaintiff,

MEMORANDUM & ORDER
12-CV-6179 (JS) (WDW)

-against-

WINDSWEPT ENVIRONMENTAL 401 (k)
PLAN,

Defendant.

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APPEARANCES

For Plaintiff: M. Patricia Smith, Esq.
Patricia M. Rodenhausen, Esq.
Stacy Melissa Goldberg
U.S. Department of Labor
201 Varick Street, Room 983
New York, NY 10014

For Defendant: No appearances.

SEYBERT, District Judge:

Pending before the Court is Plaintiff Seth D. Harris, Acting Secretary of Labor, United States Department of Labor's¹ ("Plaintiff") motion for default judgment and Magistrate Judge William D. Wall's Report and Recommendation ("R&R"). For the following reasons, the Court ADOPTS Judge Wall's R&R in its entirety, Plaintiff's motion is GRANTED, and Plaintiff's Proposed Order and Judgment is so ordered.

¹ Hilda L. Solis was the Secretary of Labor when the action was initially filed. The Clerk of the Court is directed to substitute Seth D. Harris as Plaintiff.

BACKGROUND

Plaintiff commenced this action on December 17, 2012 against Defendant to enjoin practices in violation of Title I of the Employee Retirement Income Security Act of 1974 ("ERISA"), as amended 29 U.S.C. § 1001 et seq. More specifically, Plaintiff alleges that Defendant has no active fiduciary and therefore asks that the Court use its equitable powers to appoint an Independent Fiduciary for the Plan.

Despite having been served with the Summons and Complaint (see Docket Entry 5), Defendant has not entered an appearance. Plaintiff requested a Certificate of Default (see Docket Entry 6), which the Clerk of the Court issued on April 8, 2013 (see Docket Entry 7). Accordingly, Plaintiff now moves for default and requests the appointment of an Independent Fiduciary. (Docket Entry 8.) Plaintiff has also provided the Court with a Proposed Order and Judgment. (Docket Entry 8-5.) This Court referred Plaintiff's motion on July 25, 2013 (see Docket Entry 9), and Judge Wall issued his R&R on August 21, 2013 (R&R, Docket Entry 10).

Judge Wall recommends that Plaintiff's motion be granted, that M. Larry Lefoldt be appointed as an Independent Fiduciary to Defendant, and that the Proposed Order and Judgment be adopted and so ordered by this Court, with Mr. Lefoldt's name inserted in section II(V)(2).

DISCUSSION

In reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C). If no timely objections have been made, the "court need only satisfy itself that there is no clear error on the face of the record." Urena v. New York, 160 F. Supp. 2d 606, 609-10 (S.D.N.Y. 2001) (internal quotation marks and citation omitted).

Objections were due within fourteen (14) days of the date of the R&R. The time for filing objections has expired, and no party has objected. Accordingly, all objections are hereby deemed to have been waived.

Upon careful review and consideration, the Court finds Judge Wall's R&R to be comprehensive, well-reasoned and free of clear error, and it ADOPTS the R&R in its entirety.

CONCLUSION

Judge Wall's R&R is ADOPTED in its entirety, Plaintiff's motion for default judgment is GRANTED, and Plaintiff's Proposed Order and Judgment is adopted and SO ORDERED, naming M. Larry Lefoldt as an Independent Fiduciary to Defendant.

In addition, the Clerk of the Court is directed to substitute Seth D. Harris as Plaintiff in place of Hilda L. Solis.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: October 7, 2013
Central Islip, New York